

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
File No. 1:22-CV-478

<p>HAYDEN SCOTT ROSE,</p> <p>Plaintiff,</p> <p>v.</p> <p>PRESQUE ISLE VILLAS CONDOMINIUM HOMEOWNERS ASSOCIATION, Inc., PRESQUE ISLE VILLAS CONDOMINIUM HOMEOWNERS ASSOCIATION, Inc., BOARD OF DIRECTORS, COMMUNITY ASSOCIATION MANAGEMENT, Ltd., and BAGWELL HOLT SMITH, P. A.,</p> <p>Defendants.</p>	<p>RESPONSE TO PLAINTIFF'S REQUEST FOR DISCOVERY PURSUANT TO RULE 56(d)</p>
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**DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR DISCOVERY
PURSUANT TO RULE 56(d)**

NOW COME Defendants, Presque Isle Villas Condominium Homeowners Association, Inc., Presque Isle Villas Condominium Homeowners Association, Inc. Board of Directors, and Community Association Management, Limited, (*incorrectly identified in the caption as "Ltd."*) by and through counsel and pursuant to this Court's September 20, 2022 Order (Doc. 18), and hereby respond to Plaintiff's Request for Discovery Pursuant to Rule 56(d).

On September 30, 2022, Defendants filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. In support of his request for discovery, Plaintiff contends the exhibits attached to Defendants' Rule 12(c) motion are to be considered matters outside of the pleadings and, therefore, pursuant to Rule 12(d) of the Federal Rules of Civil

Procedure and *Jones v. Penn Nat. Ins. Co*, 835 F. Supp 2d 89, 94 (W.D.N.C. 2011), this Honorable Court must convert the Rule 12(c) motion to a Rule 56 motion unless it specifically does not consider matters outside of the pleadings.

In addressing a Rule 12(c) Motion, courts may consider “the pleadings and any attachments to the pleadings and materials referenced, *which are incorporated into the pleadings by [Fed. R. Civ. P. 10(c)].*” *Preston v. Leake*, 629 F. Supp. 2d 517, 521 (E.D.N.C. 2009) (*emphasis added*). “A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” *Fed. R. Civ. P. 10(c)*. Courts may also consider “matters of public record susceptible to judicial notice.” *National Quarry Services, Inc. v. First Mercury Insurance Company, Inc.*, 372 F. Supp .3d 296, 301 (M.D.N.C. 2019).

The exhibits attached to Defendants’ September 30, 2022 Rule 12(c) motion were originally attached to Defendants’ Answer to Amended Complaint filed on August 23, 2022 (Doc.13) and were re-attached to the Rule 12(c) motion for ease of reference. As these exhibits were attached to Defendants’ Answer to Amended Complaint, they are considered part of the pleading for all purposes and are not considered matters outside of the pleadings. *See Fed. R. Civ. P. 10(c)*. Consequently, this Court may consider them in addressing Defendants’ Rule 12(c) motion. *See Preston*, 629 F. Supp. at 521. Therefore, conversion to a motion for summary judgment pursuant to Rule 12(d) of the Federal Rules of Civil Procedure is not warranted.

Wherefore, Defendants respectfully request that this Honorable Court deny Plaintiff’s request for discovery pursuant to Federal Rule of Civil Procedure 56(d).

Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

/s/ Bridget Baranyai

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Homeowners Association, Inc., Board of Directors,
and Community Association Management, Ltd.,*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed with the Clerk of Court using CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Bridget Baranyai, Esq.

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Dickie, McCamey & Chilcote, P.C.